

propulsion device to the bedframe and an uncoupled position permitting movement of the propulsion device away from the bedframe, and

a handle extending vertically and coupled to the coupler and configured to move the coupler between the coupled and uncoupled positions.

Remarks

A. Overview

Examiner Luby is thanked for the courtesies extended to the undersigned during the telephone interview on April 25, 2003. The amendments and remarks submitted herein reflect and expand on the discussions that took place during the interview.

The present application includes claims 8-40 of which claims 8-22, 26, and 29-40 have been elected for prosecution.

B. Allowable Subject Matter

Applicants acknowledge with appreciation the allowance of claims 11 and 30-33 as indicated in number paragraph 8 of the Office Action.

C. Election/Restrictions

Applicants submit that claims 23-25, 27, and 28 which are directed to a non-elected species depend from independent claim 21 which the Examiner indicated in the previous Office Action dated July 2, 2002 appears to be a generic claim. Applicants have amended claim 21 with this amendment and submit that claim 21 is in condition for allowance as explained herein. Accordingly, Applicants submit that claims 23-25, 27 and 28 depend from an allowable generic claim and are in condition for allowance. Such action is respectfully requested.

D. Claim Rejections – 35 U.S.C. §102

Claims 16-18, 20-22, 26, and 29 were rejected under 35 U.S.C §102(b) as being unpatentable over Japanese Patent Abstract 09024071 (“’071 Patent”). The ’071 Patent relates to a BED TRANSPORT DEVICE. The rejected claims include independent claims 16 and 21 from which the remaining rejected claims are dependent.

Claim 16

Applicants submit that the '071 Patent does not disclose, teach or suggest the apparatus as claimed in claim 16 which recites "A propulsion system ... comprising a propulsion device ... and a coupler ... adapted to be coupled to the patient restraint board." As discussed with the Examiner and stated in the Applicants' Amendment and Reply filed on December 8, 2002 the text of the '071 Patent states that couplers 14 and 15 of the '071 Patent are coupled to frame 3 of bed 2, not a patient restraint board.

The Figures of the '071 Patent further support that couplers 14 and 15 are coupled to frame 3, not a patient restraint board. As stated in the present application, exemplary patient restraint boards include headboards, footboards, and siderails.¹ Although portions of a headboard, footboard, or siderail may include openings, each further includes structure to restrain the movement of a patient resting in the bed. Referring to Fig. 1 of the '071 Patent, the bed transport device of the '071 Patent is completely visible through the portion of frame 3 that the Examiner appears to be characterizing as a patient restraint board. Further, the bed transport device is shorter than an upper portion of frame 3, indicating that coupler 14 (which is positioned lower than the top of the bed transport device) may not couple the upper portion of frame 3, but must couple one of the two lower portions of frame 3. As such, the '071 Patent does not disclose a patient restraint board for the bed transport device to couple thereto. Therefore, the '071 Patent does not disclose, teach or suggest a propulsion system as defined by claim 16.

For at least these reasons, Applicants submit that independent claim 16 patentably defines the invention over the '071 Patent. Accordingly, Applicants submit that independent claim 16 is in condition for allowance. Such action is respectfully requested.

Claims 17-20 depend from independent claim 16. Accordingly, Applicants submit that claims 17-20 are in condition for allowance. Such action is respectfully requested.

Claim 21

Applicants submit that the '071 Patent does not disclose, teach or suggest the apparatus as claimed in amended claim 21 which recites "A propulsion system configured to move a patient support having a bedframe ... comprising a propulsion device ... a coupler

¹ "Bed 10 includes a bedframe 12, a mattress 14 positioned on bedframe 12 to define a patient rest surface 16, a first patient restraint board or headboard 18 coupled to bedframe 12, a second patient restraint board or footboard 20 coupled to bedframe 12, and a pair of third patient restraint boards or siderails 22 coupled to bedframe 12. " Specification, page 4, lines 4-8.

configured to move between a coupled position ... and an uncoupled position ... and a handle extending vertically and coupled to the coupler and configured to move the coupler between the coupled and uncoupled positions.” The Examiner stated that handle 11 of the ‘071 Patent is a vertically extending handle “inasmuch as it is extended at a vertical height above the floor.” The Applicants submit that handle 11 of the ‘071 Patent is horizontally extending and not vertically extending. The apparatus of the ‘071 Patent at least does not disclose, teach, or suggest “a vertically extending handle extending above the coupler and configured to move the coupler between the coupled and uncoupled positions,” as required by the propulsion system of claim 21.

For at least these reasons, Applicants submit that independent claim 21 patentably defines the invention over the ‘071 Patent. Accordingly, Applicants submit that ~~independent claim 21 is in condition for allowance.~~ Such action is respectfully requested.

Claims 22, 26, and 29 depend from independent claim 21. Accordingly, Applicants submit that claims 22, 26, and 29 are in condition for allowance. Such action is respectfully requested.

Further, claims 23-25, 27, and 28 depend from independent claim 21 and are directed to a non-elected species. The Examiner indicated in the Office Action dated July 2, 2002 that independent claim 21 appears to be a generic claim. Accordingly, Applicants submit that claims 23-25, 27, and 28 depend from an allowable generic claim and are in condition for allowance. Such action is respectfully requested.

E. Claim Rejections – 35 U.S.C. §103

Claims 8-10, 12-15, 19, and 34-40 were rejected under 35 U.S.C §103(a) as being unpatentable over the ‘071 Patent. The rejected claims include independent claims 8 and 34 from which the remaining rejected claims are dependent.

In rejecting both independent claim 8 and independent claim 34, the Examiner relied on In re Stevens, 101 USPQ 284 (CCPA 1954). In rejecting claim 8, the Examiner cited to In re Stevens and stated, “It would have been obvious ... to make at least one of the first and second member adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art and in order to provide for adjustability to patient supports of varying heights.” In rejecting claim 34, the Examiner cited to In re Stevens stated, “It would have been obvious ... to make the separation between the first and second member adjustable, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art and in order to provide for

adjustability to patient supports of varying heights.” Applicants submit that the Examiner is reading In re Stevens too broadly and that at least the limitation “at least one of the first member and the second member being adjustable” of independent claim 8 patentably defines claim 8 over the ‘071 Patent and that at least the limitation “the separation between the first member and the second member being adjustable” of independent claim 34 patentably defines claim 34 over the ‘071 Patent.

The claims at issue in the In re Stevens case were directed to a handle for a fishing rod. The handle of the fishing rod was connected to the body portion with a universal joint such that the handle was universally adjustable. The handle further included a longitudinally adjustable finger hook. The Examiner rejected the claims over a combination of the references, Teetor in view of either Bagley or Falge et al. and in view of either Yuncker or Crosby. Teetor related to a fishing rod handle and gave as a principle object a pivotably attached hand grip.² The Bagley and Falge et al. references relate to a hanger for electrical fixtures and a rear view mirror holder, respectively, and both disclose a universal coupling between two members. Both the Yuncker and Crosby references were related to fishing equipment and both disclosed an adjustable finger grip. As such, in the In re Stevens case the cited art included both types of adjustability included in the claims at issue.

The Board of Patent Appeals and Interferences examined the breath of the In re Stevens case in 1997 in the unpublished and non binding precedential opinion Ex Parte Beasley 1997 WL 1948977 (Bd. Pat. App. and Interf. 1997).³ In the Ex Parte Beasley case, the Examiner rejected claims under 35 U.S.C. §103 over a single reference. The rejected claims were directed to a turntable and including “means for elevationally adjusting the support wheels (claims 4 and 19), means for elevationally adjusting the wheel track (claims 12 and 24), and means on the center bearing for elevationally adjusting the orientation of the assembled panel units (claim 14).”⁴ The Examiner, relying on In re Stevens, stated “these means are just obvious design choices, since it has been held to be within the general skill of a worker in the art to make structural members adjustable as a matter of obvious engineering design choice.”⁵

The Board distinguished In re Stevens on the basis that the adjustable means

² “providing a handle having a grip which may be located in a position that constitutes substantially an elongation of the rod or may be passed to a position that is downwardly included with respect to the rod after the manner of a pistol grip.” In re Stevens 101 USPQ at 284-85.

³ Ex Parte Beasley is also available from the USPTO web site at the following location:
<http://www.uspto.gov/web/office/dcom/bpai/bpai.htm>.

⁴ Ex Parte Beasley, 1997 WL at *4.

⁵ Ex Parte Beasley, 1997 WL at *4.

of the Beasley application solve a stated problem unlike the types of adjustability in Stevens wherein the prior art taught the basic concept of adjustability in the same art and the specific joints being claimed. The Board in reviewing the Beasley rejection and the Beasley application noted that the claimed adjustment means “are for the express purpose of fine tuning the turntable relative to its supporting structure.”⁶ The Board went on to contrast the Beasley claims and the In re Stevens case by stating:

“Thus, they [, the claimed adjustment means,] are not merely a matter of obvious design choice solving no stated problem. ... The Stevens case cited ... in support [of] the examiner’s position is noted. In Stevens, the examiner cited references which taught both the basic concept of adjustability in the same art area as the claimed device, and the specific joints being claimed. Thus, in Stevens, the examiner provided sufficient evidence from which to conclude that the claimed subject matter would have been obvious. Such is clearly not the case here.”⁷

Ex Parte Beasley suggests that for an adjustable feature in a claim to be unpatentable, the cited art must show the basic concept of adjustability in the same art area and show the specific adjustment type being claimed.

Applicants submit that the ‘071 Patent does not disclose, teach, or suggest at least the “at least one of the first member and the second member being adjustable” limitation of claim 8 or the “the separation between the first member and the second member being adjustable” limitation of claim 34 (the “Adjustment Features”). The Adjustment Features provide for the propulsion system of claim 8 and the propulsion system of claim 34, respectively, to accommodate beds of various heights. See footnote Specification p.6, line 12 to p.7, line 19. As discussed with the Examiner, the ‘071 Patent does not disclose, teach, or suggest the concept of adjustability to accommodate beds of differing dimensions. As such, the Applicants submit that claims 8 and 34 are in condition for allowance. Such action is respectfully requested.

Claims 9, 10, and 12-15 depend from independent claim 8. Accordingly, Applicants submit that claims 9, 10, and 12-15 are in condition for allowance. Such action is respectfully requested.

Claims 35-40 depend from independent claim 34. Accordingly, Applicants submit that claims 35-40 are in condition for allowance. Such action is respectfully requested.

⁶ Ex Parte Beasley, 1997 WL at *4.

⁷ Ex Parte Beasley, 1997 WL at *4.


F. Final Remarks

Claims 8-40 are believed to be in condition for allowance. Such allowance is respectfully requested.

If necessary, please consider this a Petition for Extension of Time to effect a timely response. Please charge any additional fees or credits to the account of Bose McKinney & Evans, LLP Deposit Account No. 02-3223. In the event that there are any questions related to these amendments or to the application in general, the undersigned would appreciate the opportunity to address those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

BOSE McKINNEY & EVANS, LLP


William S. Meyers
Reg. No. 42,884

Indianapolis, Indiana 46204
(317) 684-5273



APPENDIX

MARKED UP COPY OF THE AMENDMENTS UNDER §1.121

This MARKED UP COPY OF THE AMENDMENTS UNDER §1.121 is filed herewith an amendment pursuant to 37 C.F.R. §1.111. Amendments are shown by brackets for deletions and underlining for additions.

In the Claims

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Please amend claim 21 to read as follows:

21. (Amended) A propulsion system configured to move a patient support having a bedframe and mattress supported by the bedframe, the propulsion system comprising
- a propulsion device adapted to contact the floor to power movement of the patient support,
 - a coupler configured to move between a coupled position coupling the propulsion device to the bedframe and an uncoupled position permitting movement of the propulsion device away from the bedframe, and
 - a [vertically extending] handle extending vertically and coupled to the coupler and configured to move the coupler between the coupled and uncoupled positions.